



## POLICE DEPARTMENT

December 22, 2010

MEMORANDUM FOR: Police Commissioner

RE: Police Officer Barry Knox  
Tax Registry No. 904284  
Police Service Area 2  
Disciplinary Case No. 86126/10  
-----

The above-named member of the Department appeared before me on September 16, 2010, charged with the following:

1. Said Police Officer Barry Knox, assigned to PSA 2, on or about July 4, 2009, while on-duty, while assigned to the Temporary Headquarters Vehicle, after receiving a radio transmission of a "male shot", failed to provide police assistance as required.

P.G. 202-21, Page 1, Paragraph 8 – POLICE OFFICER, DUTIES AND RESPONSIBILITIES

2. Said Police Officer Barry Knox, while assigned as indicated above, on or about July 4, 2009, while on-duty, made an incorrect entry in his Department issued memo book. (*As amended*)

P.G. 212-08, Page 1, Paragraph 1a(1) ACTIVITY LOGS

The Department was represented by Vivian Joo, Esq., Department Advocate's Office, and the Respondent was represented by Craig Hayes, Esq.

The Respondent, through his counsel, entered a plea of Guilty to one of the subject charges and a plea of Not Guilty to the remaining charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

COURTESY • PROFESSIONALISM • RESPECT

DECISION

The Respondent, having pleaded Guilty, is found Guilty of Specification No. 2.

The Respondent is found Guilty of Specification No. 1.

SUMMARY OF EVIDENCE PRESENTEDIntroduction

It is not disputed that the Respondent, assigned to Police Service Area 2 (PSA 2), performed a tour of duty which started at 2315 hours on July 3, 2009, and ended at 0750 hours on July 4, 2009. He was assigned to the Temporary Headquarters Vehicle (THV) special post which is a marked truck that was parked on Loring Avenue, Brooklyn (Loring). The THV was in front of the courtyard area of 1306-1308 Loring which is located within the Louis H. Pink Housing Development (the Pink Houses) which is within the confines of the 75 Precinct. The THV was parked adjacent to the Pink Houses because on a previous occasion a shooting had taken place there.

The Department's Case

The Department called Police Communications Technician Terri Washington, Lieutenant Daryl Miller, Deputy Inspector Juanita Holmes, and Sergeant Kurt Potter as witnesses.

Police Communications Technician Terri Washington

Police Communications Technician (PCT) Washington, assigned to the Office of Information Technology's Tape and Records Unit, testified that she copied onto a

Compact Disc (CD) four telephone calls that were placed to 911 on July 4, 2009 regarding a shooting that had just occurred in the area of 1306 Loring [Department's Exhibit (DX) 1]. The parties stipulated that four transcripts prepared by the Department (DX 1 A-D) accurately reflect what is heard on the CD. Washington further testified that she copied onto the same CD (DX 1) radio transmissions made by the dispatcher on July 4, 2009, based on the 911 calls, to units in the field and the responses the dispatcher received from these units. The parties stipulated that a transcript prepared by the Department (DX 1E) accurately reflects what is heard on the CD.

Washington further testified that she also copied the 911 SPRINT Records regarding the calls that were placed to 911 on July 4, 2009 reporting a shooting that had just occurred in the area of 1306 Loring (DX 2). Washington, interpreting the SPRINT records, stated that the SPRINT Records show that the first 911 call reporting shots fired at 1306 Loring was received by 911 Operator "T" at 0506 hours and that the Dispatcher then communicated this call to units in the field.

On cross-examination, Washington, interpreting the SPRINT records, confirmed that the SPRINT Records show that the Dispatcher received the shots fired at 1306 Loring information from 911 Operator "T" at 0507 hours and that the SPRINT Records show that this "job" was "closed" at 0734 hours.

Lieutenant Daryl Miller

Lieutenant Miller, assigned to the Housing Bureau Investigations Unit, testified that on July 7, 2009, he was notified to respond to PSA 2 to investigate the Respondent's actions on July 4, 2009, while he was on duty assigned to the THV. On July 7, 2009,

Miller and a captain from PSA 2 went to the THV. Miller identified photos of the interior and exterior of the THV (DX 3-10). He testified that the duties of an officer assigned to the THV include monitoring the radio and conducting visual surveillance of the area around the THV by looking out the windows of the THV.

Miller recalled that his investigation determined that a party that was held in an apartment inside the Pink Houses at 1306 Loring had spilled outside into the courtyard and that, at about 0500 hours, shots were fired in the courtyard and a male was mortally wounded. Miller stated that his investigation had also determined that the man who was shot in the courtyard had passed behind the THV as he ran from the courtyard, crossed Loring and entered 1305 Loring which is directly across the street from the THV. He was discovered by responding uniformed officers inside 1305 Loring and was transported to a hospital.

Miller conducted two official Department interviews of the Respondent who confirmed that he had two radios in the THV, that both were on the same zone covering the 73 and 75 Precincts, that he heard the shots fired call come over the radio, and that, just after he heard this call, an officer came on the radio, asked him if he was on the air and if he was okay, and that he had replied, "I'm good." The Respondent made no other radio transmissions. When Miller asked the Respondent why he had not responded to the courtyard area, the Respondent stated that he had been unaware that a crime had in fact occurred. When Miller asked the Respondent why he had not responded to 1305 Loring, the Respondent stated that he had believed that the two officers who he saw being flagged down by a male were responding to a medical emergency at 1305 Loring and not a police emergency. Since they did not need his assistance, he got back into the THV.

On cross-examination, Miller confirmed that there is no Patrol Guide Procedure or Interim Order for command post vehicles and he agreed that officers assigned to a THV must rely on instructions issued by their sergeants. Miller confirmed that the THV has air conditioning and fans and a 360 degree rotating camera on the roof which can be monitored from inside the THV. Miller agreed that his investigation had determined that the Respondent was not required to perform a foot patrol outside the THV. Miller confirmed that a diagram he was shown accurately depicted the layout of 1306 and 1308 Loring and the courtyard (RX A) and that shell casings were recovered just outside of 1306 Loring about 50 yards from the THV. Miller agreed that most supervisors direct officers not to sit in the very back of the THV because there are no monitors there and because it is more difficult to observe what is going on outside the THV. Miller confirmed that there are trees between the THV and the area where the shooting occurred. Miller recalled that the previous shooting at the Pink Houses had taken place about a month prior to July 4, 2009. Miller agreed that on the CD (DX 1) the dispatcher is never heard directing either Housing Units or 75 Precinct units or the THV to respond to shots fired at 1306 Loring.

On redirect-examination, Miller agreed that the Respondent could have left the THV and responded to the courtyard outside 1306 Loring even if he was not directed to do so. Miller identified three photos of Loring Avenue (DX 11, 12 and 13).

Deputy Inspector Juanita Holmes

Deputy Inspector Holmes, who is the Commanding Officer (CO) of the 81 Precinct, recalled that on July 4, 2009, she was the CO of PSA 2. As a result of the

shooting incident at the Pink Houses on July 4, 2009, which had resulted in a homicide, she came into work that day. Based on interviews she conducted of investigative personnel, she discovered that the Respondent had not taken any police action regarding this shooting incident.

She opined that since the Respondent was assigned to the THV, he should have investigated the incident by leaving the THV, surveying the location, attempting to ascertain if a male had been shot, making a radio transmission to the dispatcher to request a more specific incident location and advising the dispatcher that he was in the area and going to investigate. She further opined that the Respondent could also have secured the crime scene and offered his assistance to the officers who had responded and requested an ambulance.

On cross-examination, she confirmed that Sergeant Kurt Potter was the patrol supervisor for the midnight tour on July 4, 2009, that Potter was aware that the THV was located near the scene of the shooting incident, and that Potter's primary duty was to secure the crime scene. She agreed that if Potter needed assistance, he should have sought assistance. She did not know whether or not Potter had made a radio transmission to the THV and directed the Respondent to come and assist him at the crime scene. She testified that she had assumed that the Respondent had heard the radio transmissions regarding the shooting incident and had responded to the crime scene. She opined that since the scene of a nighttime shooting incident can be "complete chaos," Potter may not have realized that the Respondent was not at the scene until the scene was closed up.

She confirmed that no one was ever arrested for this shooting and that the victim died from his bullet wound.

Sergeant Kurt Potter

Sergeant Potter, assigned to PSA 2, performed a tour of duty which started at 2305 hours on July 3, 2009, and ended at 0802 hours on July 4, 2009. He was assigned as patrol supervisor for the midnight tour and the Respondent was assigned to the THV. He instructed the Respondent to be aware of the surrounding area, stay alert and look for criminal activity. He stated that the blinds on the windows of the THV should be up so that there is nothing obstructing the view of the surrounding area. He identified a diagram of the Pink Houses (DX 15). The THV had been posted there for about a month.

He went to the THV on July 4, 2009, at about 0300 hours and visited the Respondent. He saw that there were no blinds blocking the windows and the lights were on. At about 0506 hours, Potter received a radio transmission of shots fired at 1306 Loring. Potter responded to the scene. When he arrived, he saw that two officers were putting the victim into an ambulance. He directed one officer to go with the victim in the ambulance and directed the other to stay at the apartment at 1305 Loring, where the victim lived, to secure the scene. Potter later found out that the crime scene was outside 1306 Loring and he directed other officers who had arrived to guard this crime scene.

Potter recalled that while they were at the crime scene, he received a radio transmission regarding an assault on Stanley Avenue so he responded there to ascertain whether that incident had anything to do with the shots fired at 1306 Loring. Potter recalled that because it was a busy night, he was not able to go to the THV again until 0630 hours after "everything calmed down at the crime scene." The Respondent was never at the crime scene. The Respondent told Potter that he had heard something but that he was not certain whether the sounds he heard were gun shots or fireworks.

On cross-examination, Potter confirmed that he had instructed the Respondent to stay alert, leave the blinds up and watch for criminal activity, and that when he went to the THV on July 4, 2009, at about 0300 hours and visited the Respondent, everything was fine at the THV. Potter confirmed that he did not personally contact the Respondent during the two hours that Potter was at the crime scene at 1306 Loring and never requested his assistance. Potter had officers go over to the THV to check on the Respondent and insure that he was okay. Potter confirmed that the shell casings were found about 75 yards from the THV.

Potter testified that if the Respondent had heard sounds that he believed may have been gunshots, he was, at the very least, supposed to look out for people running from the scene or calling for help or other indications of criminal activity.

#### The Respondent's Case

The Respondent testified in his own behalf.

#### The Respondent

The Respondent recalled that while he was inside the THV at about 0500 hours on July 4, 2009, he heard what sounded to him like fireworks. The Respondent then heard a radio transmission "something to the effect that there had been shots fired in the area." The Respondent testified that he left the THV and went "outside to perform an actual investigation." Just before he stepped out of the THV, he heard a radio transmission on both the THV radio and on his portable radio asking if he was okay. The Respondent stated into his portable radio, "I'm good." The Respondent testified that when he then



stepped out of the THV, he saw a woman putting something into the trunk of a car parked on Loring. He did not approach the woman because she did not appear to be doing anything suspicious. He saw nothing going on outside and heard nothing. The Respondent then observed two officers in a sector car and he heard on his radio that they were being flagged down outside 1305 Loring. They did not radio for his assistance. The Respondent testified that he re-entered the THV. Later, officers came to the THV to check on him and Potter later came to the THV.

The Respondent testified that the reason that he made the incorrect entry in his Department Activity Log that his tour of duty was "7/3/09 FRI 2315 X 0750" when, in fact, the tour of duty that he had actually worked was on Saturday, July 4, 2009, was because he had been performing steady 4:00 p.m. to midnight tours. Thus, he was used to entering in his Activity Log the day of the week and the date that his tour of duty began and he was not familiar with the procedure that he was supposed to enter the date which encompassed the "bulk of the work tour" that he actually performed.

On cross-examination, the Respondent confirmed that he had been told to stay alert, be aware of his surroundings and watch for any criminal activity. When the Respondent came on duty, the blinds on the windows of the THV were down. The Respondent testified that he did not raise the blinds on the windows because "I didn't feel that I needed to actually have them up." The Respondent testified that he had no recollection of having heard any radio transmissions providing a description of the shooter, or any transmissions regarding a response for a ballistics search to start at 1306 Loring, or in front of 1306 Loring, or any transmissions regarding a male who had been shot in which the dispatcher was told that the male victim was not likely to die.

FINDINGS & ANALYSISSpecification No. 1

It is charged that the Respondent, while on duty on July 4, 2009 assigned to the THV, failed to provide police assistance as required after he had received a radio transmission of a "male shot."

I find the Respondent Guilty based on Potter's testimony, Miller's testimony, the dispatcher's transmissions and the responses made to the dispatcher's transmissions by sector units (DX 1E), and the Respondent's own testimony.

The Respondent testified that when he came on duty, the blinds on the windows of the THV were down and that he did not raise the blinds on the windows because "I didn't feel that I needed to actually have them up." I credit Potter's testimony that he not only directed the Respondent to be aware of the surrounding area and to stay alert, but that he also told him to keep the blinds on the windows of the THV raised so that he would be able to clearly view the entire surrounding area. I credit Miller's testimony that his investigation determined that the victim, after being shot in the courtyard of 1306 Loring, passed the rear of the THV as he fled from the courtyard, crossed Loring and entered the building at 1305 Loring which is directly across the street from the THV. Based on this testimony, I find that if the Respondent had been alert, had raised the blinds on the windows of the THV, and had been watching the area surrounding the THV through the THV's windows and/or by watching the monitor of the THV's 360 degree roof camera, it is likely that he would have seen the gunshot victim running out of the courtyard, or crossing Loring, or entering 1305 Loring.

I credit Miller's testimony that when Miller asked the Respondent why he had not responded to the area of 1306 Loring, the Respondent stated that he had been unaware that a crime had in fact occurred there and that when Miller asked the Respondent why he had not responded to 1305 Loring, the Respondent stated that he had believed that the two officers who he saw being flagged down by a male were responding to a medical emergency at 1305 Loring, not a police emergency. The transcript of the dispatcher's transmissions regarding this incident (DX 1E) establishes that if the Respondent had been monitoring his radio, as he was required to do, he would have been aware that a crime had been reported in the area of 1306 Loring, and that the officers who he saw being flagged down outside 1305 Loring were engaged in a police emergency. The transcript shows that just before the Respondent stated, "THV on the air," (DX 1E p. 7), the dispatcher had twice transmitted "shots fired" at "1306 Loring" and the second transmission contained the additional information: "Say shots fired in front of the location, states a group of people also fighting." Moreover, immediately after the Respondent stated, "Yeah, I'm good," the dispatcher transmitted: "Be advised, in regards to the 1306 Loring, it's now coming over as a 52 of a dispute outside with a firearm, states also in front of."

At this trial, the Respondent grudgingly admitted that he had heard a radio transmission "something to the effect that there had been shots fired in the area." I find that the dispatcher's transmissions and the responses made to the dispatcher's transmissions by sector units (DX 1E) establish that the Respondent was aware (or should have become aware if he was monitoring his radio as he was required to do) that: multiple shots had been fired in the immediate vicinity of the THV; that a sector unit

responding to the reports of shots fired had been flagged down directly across the street from the THV to aid a male who had been shot; that a description of the shooter had been transmitted; and that an effort to recover ballistics evidence needed to be commenced at a location less than 100 yards from where the THV was parked. The Respondent made no attempt to provide any police assistance regarding any of these events even though the radio transmissions reported that these events were taking place right outside the THV he occupied.

The Respondent asserted that after he heard the radio transmission that there had been shots fired in the area, he left the THV and went “outside to perform an actual investigation.” However, the Respondent’s own testimony establishes that he performed no investigation at all. The Respondent testified that when he stepped out of the THV, he saw a woman putting something into the trunk of a car parked between 1306 and 1308 Loring Avenue. Even though, as noted above, the dispatcher had transmitted information about a dispute outside of 1306 Loring involving a firearm, the Respondent admitted that he did not approach the woman to see what she was putting into her car, he did not ask her who she was, and he did not ask her whether she had seen a firearm or heard any gun shots. He never asked her any questions. The Respondent’s explanation that he did not approach the woman because it appeared to him that she was merely putting laundry into her car, does not justify his failure to approach her to see exactly what she was putting into her car, or his failure to ascertain who she was, whether she had witnessed a group of people fighting outside 1306 Loring or had seen a dispute involving a firearm, or had heard gunshots.

The Respondent further acknowledged that while he was standing outside the THV, he saw a RMP stop near the THV and he saw two uniformed officers exit the RMP and run into 1305 Loring. Despite his availability to assist these officers, the Respondent admitted that he never made any radio transmissions to ascertain whether the officers needed assistance. The Respondent's claim that he did nothing because he believed that the two officers were responding to a medical emergency and not a police emergency, is belied by the fact that the officers transmitted to the dispatcher that "we're getting flagged down for a possible male shot inside 1305 Loring," which immediately thereafter became "confirmed male shot," and that the male appeared to have been "shot in the back." (DX 1E p. 8-9)<sup>1</sup>

Finally, since the Respondent clearly recalled being asked whether he was okay, I do not credit the Respondent's claim that he had no recollection of having heard any radio transmissions made by officers to the dispatcher providing a description of the shooter (DX 1E p. 10-11) or transmissions made by officers regarding a "response for a ballistics search" to "start at 1306 Loring" (DX 1E p. 13) and "for ballistics search in front of 1306...Loring" and that "in regards to the shooting" the "male is likely" to die "at this time." (DX 1E p. 27-28). The Respondent himself made no radio transmissions regarding the radio transmissions that he was, or should have been, monitoring and his activity log shows that the next entry he made after he entered "0508-APPROX 4 to 6 SHOTS IN AREA" was "0730-RELIEVED BY P.O. RODRIGUEZ."

The Respondent is found Guilty of Specification No. 1.

---

<sup>1</sup> In reaching these findings I have not considered the recorded telephone calls made by civilians to 911 (DX 1 A-D) because the Respondent was not privy to any of the information provided to the 911 operators who answered these calls unless that information was conveyed by the dispatcher via radio transmissions to units in the field, including the THV.

Specification No. 2

The Respondent admitted that he made an incorrect entry in his Department activity log in that he entered in his memo book that his tour of duty was "7/3/09 FRI 2315 X 0750" when the tour of duty that he actually worked was Saturday, July 4, 2009. In mitigation, the Respondent testified that because he had previously been assigned to steady 1600 hours to midnight tours, he was used to entering in his Department Activity Log the date that his tour of duty started and he was not familiar with the procedure that he was supposed to enter the date which encompassed the "bulk of the work tour" that he actually performed.

The Respondent, having pleaded Guilty, is found Guilty of Specification No. 2.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974).

The Respondent was appointed to the Department on August 30, 1993. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has been found Guilty of failing to provide police assistance as required after he had received a radio transmission of a "male shot" while he was inside the THV. The Respondent has also pleaded guilty and admitted that he made an incorrect entry in his Department issued memo book in that he entered July 3, 2009 in his memo book rather than the correct date of July 4, 2009.

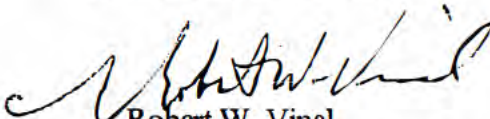
The Assistant Department Advocate recommended that the Respondent forfeit 30 vacation days as a penalty.

In Disciplinary Case No. 84358/08 (signed July 8, 2010) and Disciplinary Case No. 84357/08 (signed July 13, 2010), a six-year police officer and a seven-year police officer, neither of whom had a prior disciplinary record, forfeited 20 vacation days each for failing to take proper police action after they learned that a man had been intentionally struck by a car which was being driven by his girlfriend. In those cases, as here, the officers failed to conduct an investigation, failed to make any radio transmissions, and failed to record information regarding a potential witness in their Activity Logs.

The instant case contains an aggravating factor in that the Respondent here failed to provide police assistance regarding a shooting incident which resulted in a homicide. The consequences of a police officer's failure to provide police assistance are relevant to the question of what penalty should be imposed on the officer. Here, the shooting incident in which the Respondent failed to provide police assistance resulted in a homicide which has never been closed by the arrest of the perpetrator. Thus, under the circumstances presented here, the Respondent's failure to provide police assistance warrants a 30 day penalty.

It is recommended that the Respondent forfeit 30 vacation days.

Respectfully submitted,

  
Robert W. Vinal  
Assistant Deputy Commissioner - Trials

**APPROVED**  
APR 05 2011  
  
RAYMOND W. KELLY  
POLICE COMMISSIONER



POLICE DEPARTMENT  
CITY OF NEW YORK

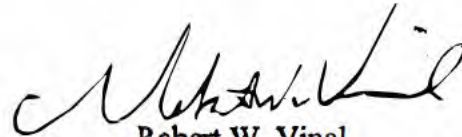
From: Assistant Deputy Commissioner - Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER BARRY KNOX  
TAX REGISTRY NO. 904284  
DISCIPLINARY CASE NO. 86126/10

The Respondent received an overall rating of 3.5 on his 2009 performance evaluation, 3.0 on his 2008 evaluation, and 4.0 on his 2007 evaluation. He has been awarded three Excellent Police Duty medals. [REDACTED]

[REDACTED] He has no prior formal disciplinary record.

On March 9, 2010, he was placed in Level I Disciplinary Monitoring based on his history with the Department. This Disciplinary Monitoring is still active.

For your consideration.



Robert W. Vinal  
Assistant Deputy Commissioner - Trials